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## INTERNATIONAL SEARCH REPORT

International application No.

PCT/EP 94/01323

## Box I Observations where certain claims were found unsearchable (Continuation of item 1 of first sheet)

This international search report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☐ Claims Nos.:  
because they relate to subject matter not required to be searched by this Authority, namely:
2. ☐ Claims Nos.:  
because they relate to parts of the international application that do not comply with the prescribed requirements to such an extent that no meaningful international search can be carried out, specifically:
3. ☐ Claims Nos.:  
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

## Box II Observations where unity of invention is lacking (Continuation of item 2 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

See annex.

1. ☐ As all required additional search fees were timely paid by the applicant, this international search report covers all searchable claims.
2. ☐ As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this international search report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☒ No required additional search fees were timely paid by the applicant. Consequently, this international search report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:

1,2,6-10 partially ; 11,15-23 partially.

Remark on Protest

- ☐ The additional search fees were accompanied by the applicant's protest.
- ☐ No protest accompanied the payment of additional search fees.

## FURTHER INFORMATION CONTINUED FROM PCT/ISA/210

LACK OF UNITY OF INVENTION

1. Claims: 1;2;6-10 (partially); 11;15-23 (partially):  
Polynucleotides or amino acids corresponding  
to the core/E1 region of HCV subtype 3a and  
their uses.
2. Claims: 1;2;6-10 (partially); 11;15-23 (partially):  
Polynucleotides or amino acids corresponding  
to other regions of the genome of HCV subtypes 3,  
3a and 3c and their uses.
3. Claims: 1;3;6-10 (partially); 13;15-23 (partially):  
Polynucleotides or amino acids corresponding  
to various regions of the genome of HCV subtype 5  
and their uses.
4. Claims: 1;4;6-10 (partially); 12;15-23 (partially):  
Polynucleotides or amino acids corresponding to  
various regions of the genome of HCV subtype 4 and  
their uses.
5. Claims: 1;5;6-10 (partially); 14;15-23 (partially):  
Polynucleotides or amino acids corresponding to  
various regions of the genome of HCV subtype 2d  
and their uses.

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1355  
2551-105



UNITED STATES  
PATENT AND  
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
WWW.USPTO.GOV

NOV 19 2002

B. J. SADOFF  
NIXON & VANDERHYE P.C.  
1100 NORTH GLEBE ROAD, 8<sup>TH</sup> FLOOR  
ARLINGTON, VA 22201-4714

In re Application of  
Geert Maertens et al  
Serial No.: 08/836,075  
Filed: April 21, 1997  
Attorney Docket No.: 2752-31

:  
:  
: PETITION DECISION  
:  
:

This is a decision on the petition under 37 CFR 1.181, filed December 19, 2002, requesting removal of an improper restriction requirement.

#### BACKGROUND

A review of the pertinent portion of the file history shows that this application was allowed and the Issue Fee was paid prior to September, 1999. Through error the application was held abandoned in August, 2000, and the abandonment rescinded in December, 2000. In January, 2001, a petition under 37 CFR 1.313 accompanied by an RCE request and an IDS statement was filed. The petition was granted on January 26, 2001, which was too late to prevent publication of the patent, per se. By Notice in the Official Gazette indication was given that no patent had issued for the assigned number. The application was then returned to the examiner for further action.

Subsequently several additional IDS statements were submitted as well as an amendment. The examiner mailed an Office action to applicants on November 19, 2002, setting forth a two way restriction requirement, as follows:

Group I, claims 75-84, drawn to unique polypeptides from differing HCV genomes;  
Group II, claim 85, drawn to a purified polypeptide.

In addition, the election of a single amino acid sequence was required irrespective of whichever group was elected. Applicants replied on December 19, 2002, electing Group I and SEQ ID NO. 43 with traverse. Applicants also filed this petition to have the restriction requirement withdrawn.

**DISCUSSION**

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Applicants argue that all of the claims currently active in the application were prosecuted and allowed by the same examiner in June, 1999. Applicants have amended the claims only to cancel one dependent claim and to remove some of the sequence identifiers from the claims so as to avoid newly submitted prior art. Applicants argue that since all of the claims were previously considered together they should not be divided now. Applicants basically argue that the Office has been inconsistent in prosecution of this application and that the restriction requirement should be withdrawn.

It is also noted that this application is the National Phase filing of PCT/EP95/04155. As such the making of a restriction requirement solely under 35 U.S.C. 121 without consideration of PCT Rule 13 provisions is improper. As only RCE papers have been filed this application remains a National Phase application.

**DECISION**

Applicants' petition is **GRANTED**.

**The restriction requirement of the last Office action is withdrawn. The application will be forwarded to the examiner for consideration of the response filed December 19, 2002.**

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

John Doll

Director, Technology Center 1600

**COPY**

Serial No.: 09/638,693 C#/M#: 2551-114  
Inventor/s: MAERTENS et al. Atty: B. J. Sadoff  
Date: Jun. 24, 03  
Title: NEW SEQUENCES OF HEPATITIS C VIRUS  
GENOTYPES AND THEIR USE AS THERAPEUTIC AND  
DIAGNOSTIC AGENTS

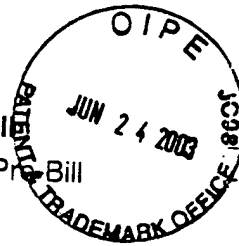
**XX Amendment**

☒ **Address Indication Form**

\$ Fee (Check) - Pre-Bill  
\$482.00 Fee (Check) - Non Pre-Bill

**\$482.00 Total Fee Enclosed**

Other: Copy of International Search Report (relevant  
portion) from parent application PCT/EP94/01323.



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Serial No.: 09/038693  
Applicant: Maertens et al  
Title: New Sequences of  
Nucleotides

Atty: BJS  
Date: 1/17/02  
Client:  
Ref: 2752-15

Amendment  
Pages Specification  
Claims  
Sheets Drawings: Formal  
Informal  
Declaration ( Pages)  
Assignment  
Priority Document  
Base Issue Fee Transmittal  
Fee (Check)

Other:

Response



1487-4



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

(file)  
#4

US APPLICATION NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/362,455	MAERTENS	G 1487-4

INTERNATIONAL APPLICATION NO.
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PCT/EP94/01323

I.A. FILING DATE	PRIORITY DATE
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04/27/94 04/27/93

DATE MAILED: 02/10/95

5611  
NIXON & VANDERHYE P.C.  
1100 NORTH GLEBE ROAD, 8TH FLOOR  
ARLINGTON, VIRGINIA 22201

NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371  
AND 37 CFR 1.494 OR 1.495

1. The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as ☒ a Designated Office (37 CFR 1.494), ☐ an Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is **ACCEPTED** for national patentability examination in the United States Patent and Trademark Office.

2. The United States Application Number assigned to the application is shown above and the relevant dates are:

11 JAN 1995  
35 U.S.C. 102(e) DATE

11 JAN 1995  
DATE OF RECEIPT OF  
35 U.S.C. 371 REQUIREMENTS

3. ☒ A request for immediate examination under 35 U.S.C. 371(f) was received on 27 DEC 1994 and the application will be examined in turn.

4. The following items have been received:

☒ U.S. Basic National Fee.

☒ Copy of the international application in:

☐ a non-English language.

☒ English.

☐ Translation of the international application into English.

☒ Oath or Declaration of inventor(s) for DO/EO/US.

☐ Copy of Article 19 amendments. ☐ Translation of Article 19 amendments into English.

The Article 19 amendments ☐ have ☐ have not been entered.

☐ The International Preliminary Examination Report in English and its Annexes, if any.

☐ Translation of Annexes to the International Preliminary Examination Report into English.

The Annexes ☐ have ☐ have not been entered.

☒ Preliminary amendment(s) filed 27 DEC 1994 and \_\_\_\_\_

☒ Information Disclosure Statement(s) filed 27 DEC 1994 and \_\_\_\_\_

☐ Assignment document.

☐ Power of Attorney and/or Change of Address.

☐ Substitute specification filed \_\_\_\_\_

☒ Verified Statement Claiming Small Entity Status.

☒ Priority Document.

☒ Copy of the Search Report ☒ and copies of the references cited therein.

☐ Other:

A Filing Receipt (PTO-103X) will be issued for the present application in due course. Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

Applicant is reminded that any communication to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above. (37 CFR 1.5)

Vonda M. Wallace  
Paralegal Specialist

Telephone: (703) 305-3736